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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 LION RAISINS, INC.,) 1:05-cv-00062-REC-SMS
12 Plaintiff,)
13 vs.)
14 UNITED STATES DEPARTMENT OF)
15 AGRICULTURE,)
16 Defendant.)
17 _____
18 Summary Judgment Motion(s)
19 Hearing Date:
8/29/05, 1:30pm, Ctrm. 1/REC

20 1. Date of Scheduling Conference:

21 June 27, 2005.

22 2. Appearances of Counsel:

23 Brian C. Leighton, Esq., appeared on behalf of
24 plaintiffs.

25 Assistant United States Attorney Kristi C. Kapetan
26 appeared on behalf of defendants.

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1 3. The Pleadings:

2 A. Summary of the Pleadings.

3 Plaintiff brings this action for declaratory and
4 injunction relief under the Freedom of Information Act ("FOIA").
5 Plaintiff claims that defendant is withholding documents that it
6 needs to defend itself in an action instituted by defendant to
7 debar plaintiff from all USDA inspections. The USDA instituted
8 debarment proceedings against plaintiff for allegedly altering USDA
9 certificates. Plaintiff contends that it has not been provided
10 with "voided certificates" or "worksheets" in the underlying
11 administrative proceeding defendant is conducting as part of the
12 debarment proceeding.

13 On May 13, 2004, plaintiff submitted an official
14 FOIA request to defendant for any and all Forms FV-146
15 (certificates of quality and condition) which had been voided at
16 Lion Raisins, Inc., during the period of January 1995 to December
17 2000. Defendant is withholding the documents pursuant to 5 U.S.C.
18 § 522(b) (7) (A) because the documents are evidence in the ongoing
19 investigation of plaintiff. Plaintiff appealed and the decision to
20 withhold these documents was reversed. By letter dated February
21 14, 2005, 534 documents representing the USDA Certificates of
22 Quality and Condition (form FV-146) which were voided by USDA
23 personnel at Lion Raisins, Inc., between August 1, 1995 and
24 December 31, 2000, were sent to plaintiff.

25 By letter dated May 13, 2004, plaintiff also
26 requested the Certificate of Quality and Condition for Raisins
27 Worksheets issued or prepared by defendant for product inspected at
28 Lion Raisins, Inc., during the period of January 1995 to December

1 2000. Defendant refused to release the records, and that refusal
2 was upheld on appeal. Defendant has not released those records.

3 B. Orders Re: Amendment of Pleadings.

4 No amendments are proposed at this time.

5 4. Factual Summary:

6 A. Admitted Facts which are deemed proven without
7 further proceedings.

8 (1) Venue

9 (2) Plaintiff has exhausted its administrative
10 remedies with respect to the documents sought.

11 B. Contested Facts.

12 (1) All other facts.

13 5. Legal Issues:

14 A. Uncontested.

15 (1) Venue

16 B. Contested.

17 (1) All other legal issues.

18 6. Discovery Plan and Cut-Off Dates:

19 This case must be decided on the administrative record
20 and, therefore, no discovery is anticipated.

21 7. Pre-Trial Motion Schedule:

22 The parties agree to file cross-motions for summary
23 judgment by July 21, 2005; responses to said motions due by August
24 4, 2005; reply briefs by August 11, 2005; and, a hearing on August
25 29, 2005 at 1:30 p.m. in Courtroom No. 1 before the Honorable
26 Robert E. Coyle, Senior United States District Judge.

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1 8. Related Matters Pending:

2 Lion Bros v. USDA
3 1:05-cv-00292-REC-SMS

4 Lion Raisins v. USDA
5 1:05-cv-00640-REC-SMS

6 9. Compliance with Federal Procedure:

7 The Court requires compliance with the Federal Rules of
8 Civil Procedure and the Local Rules of Practice for the Eastern
9 District of California. To aid the Court in the efficient
10 administration of this case, all counsel are expected to
11 familiarize themselves with the Federal Rules of Civil Procedure
12 and the Local Rules of Practice for the Eastern District of
13 California, and to keep abreast of any amendments thereto. The
14 Court must insist upon compliance with these Rules if it is to
15 efficiently handle its increasing caseload. Sanctions will be
16 imposed for failure to follow the Rules as provided in both the
17 Fed.R.Civ.P. and the Local Rules.

18 10. Compliance with Electronic Filing Requirement:

19 On January 3, 2005, the United States District Court for
20 the Eastern District of California became an electronic case
21 management/filing district (CM/ECF). Unless excused by the Court,
22 or by Local Rule, attorneys shall file all documents electronically
23 as of **January 3, 2005** in all actions pending before the court.
24 While Pro Se Litigants are exempt from this requirement, the court
25 will scan in all documents filed by pro se litigants, and the
26 official court record in all cases will be electronic. Attorneys
27 are required to file electronically in pro se cases. More
28 information regarding the Court's implementation of CM/ECF can be
 found on the court's web site at www.caed.uscourts.gov, including

1 the Court's Amended Local Rules effective January 3, 2005, the
2 Court's CM/ECF Final Procedures, and the Court's CM/ECF User's
3 Manual.

4 While the Clerk's Office will not refuse to file a
5 proffered paper document, the Clerk's Office will scan it and, if
6 improperly filed, notify the Court that the document was filed in
7 an improper format. An order to show cause (OSC) may be issued in
8 appropriate cases regarding an attorney's disregard for the
9 requirement to utilize electronic filing, or other violations of
10 these electronic filing procedures. See L.R. 11-110, L.R.
11 5-133(d) (3).

12 If counsel has not already done so, counsel **must** register
13 for CM/ECF as soon as possible. On-line registration is available
14 at www.caed.uscourts.gov. Once registered, counsel will receive a
15 login and password in approximately one (1) week. Counsel must be
16 registered to file documents on-line. See L.R. 5-135(g). Counsel
17 are responsible for knowing the rules governing electronic filing
18 in the Eastern District. Please review the Court's Local Rules
19 effective January 3, 2005, available on the Court's web site.

20 11. Effect of this Order:

21 The foregoing Order represents the best estimate of the
22 Court and counsel as to the agenda most suitable to bring this case
23 to resolution. If the parties determine at any time that the
24 schedule outlined in this Order cannot be met, counsel are ordered
25 to notify the Court *immediately* so that adjustments may be made,
26 either by stipulation or by subsequent status conference.

27 Stipulations extending the deadlines contained herein
28 will not be considered unless they are accompanied by affidavits or

1 declarations and, where appropriate, attached exhibits which
2 establish good cause for granting the relief requested.

3 **FAILURE TO COMPLY WITH THIS ORDER SHALL RESULT IN THE**
4 **IMPOSITION OF SANCTIONS.**

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6 IT IS SO ORDERED.

7 **Dated: June 28, 2005**
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10 **/s/ Sandra M. Snyder**
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